



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Obel L. McAlister, Chairman  
Committee on State Affairs  
House of Representatives  
Forty-ninth Legislature  
Austin, Texas

Dear Sir:

Opinion No. 0-6168  
Re: Constitutionality  
of House Bill No.  
653.

Your letter of April 27, 1945, requesting the opinion of this department as to the constitutionality of House Bill No. 653 is as follows:

"A question has been raised as to the constitutionality of House Bill No. 653, introduced by Mabe and Storey, on the proposition that you cannot vote a tax for the purposes set out in the Bill that support and maintain a Board of County Development, a Board of City Development, a Chamber of Commerce, or similar organization devoted to the growth, advertisement, development and improvement of cities or towns.

"As Chairman of the Committee that passed this Bill out, I would appreciate an opinion from your department at as early date as practicable concerning the above pointed out matter."

House Bill No. 653 is as follows:

"A Bill  
"To Be Entitled

"An Act authorizing any county, city or town now or hereafter incorporated under the general laws of this State to organize, operate, support and maintain a Board of

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County Development, Board of City Development, Chamber of Commerce, or other similar organization; authorizing the levy of a tax for such purposes, provided such tax levy is authorized by a majority vote of the property tax paying qualified voters of such county, city or town at an election held for such purpose; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. Any county, city or town now or hereafter incorporated under the general laws of this State, may, in addition to all other powers now possessed by such county, city or town under the general laws of this State, be authorized by proper ordinance passed by its governing authority, to organize, operate, support and maintain a Board of County Development, a Board of City Development, Chamber of Commerce or similar organization devoted to the growth, advertisement, development and improvement of said county, city or town.

"Sec. 2. For the purpose set forth in Section 1, of this Act the governing authority of such county, city or town is hereby authorized to levy a tax not exceeding two cents (2¢) on the One Hundred Dollar valuation of the taxable property of such county, city or town provided such tax levy is first authorized by a majority vote of the property tax paying qualified voters of the county, city or town at an election called and held for such purpose as provided by law.

"Sec. 3. The fact that many counties, cities and towns have not adequately maintained and supported organizations devoted to the growth, advertisement, development and general improvement of said counties, cities or towns and the fact that such an organization would be very beneficial to the growth and general improvement of counties, cities and towns creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills be read on three several days in each House be, and the same is hereby suspended and this Act shall take effect and be in force from and after its passage and it is so enacted.

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"COMMITTEE AMENDMENT NO. 1

"Amend House Bill No. 653 by striking out all below the enacting clause and substituting in lieu thereof the following:

"Section 1. Any county of this State, and any city or town now or hereafter incorporated under the general laws of this State, may, in addition to all other powers now possessed by such county, city or town under the general laws of this State, be authorized by proper order passed by the Commissioner's Court of such county, or proper ordinance passed by the governing authority of such city or town, to organize, operate, support and maintain a Board of County Development, a Board of City Development, Chamber of Commerce, or similar organization devoted to the growth, advertisement, development, improvement and promotion of the trade and commerce generally of such county, city or town.

"Sec. 2. For the purpose set forth in Section 1 of this Act, the governing authority of such county, city or town is hereby authorized to levy a tax not exceeding two (2) cents on the One Hundred Dollar valuation of the taxable property of such county, city or town, provided such tax levy is first authorized by a majority vote of the property tax paying qualified voters of the county, city or town at an election called and held for such purpose as provided by law.

"Sec. 3. The fact that many counties, cities and towns have not adequately maintained and supported organizations devoted to the growth, advertisement, improvement and promotion of trade and commerce generally of said counties, cities and towns, and the fact that such an organization would be very beneficial to the growth and general improvement of counties, cities and towns, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage and it is so enacted."

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After carefully considering your request in connection with various provisions of the Constitution as mentioned herein, we cannot categorically answer your question as to the constitutionality of said House Bill No. 653. However, there are serious constitutional questions involved to which we will direct your attention.

Section 1 of Article VIII of the State Constitution provides in part:

"Taxation shall be equal and uniform."

Section 3 of Article VIII is:

"Taxes shall be levied and collected by general laws and for public purposes only."

Section 52 of Article III of the State Constitution is in part as follows:

"The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever. . . ."

Section 3, Article XI prohibits any county, city or municipality from making any appropriation or donation or in any wise loaning its credit to any private corporation or association.

It will be noted that House Bill No. 653 expressly authorizes any county, city or town now or hereafter incorporated under the general laws of the State to organize, operate, support and maintain a Board of County Development, Board of City Development, Chamber of Commerce, or other similar organization devoted to the growth, advertisement, development and improvement of said county, city or town. Should a county, city or town attempt to aid a Chamber of Commerce or similar organization acting as an independent association, such act or acts would contravene Section 52, Article III of the State Constitution.

It has been held by the Supreme Court in the case of Davis et al vs. City of Taylor, et al, 67 S. W. (2d) 1033, that a home rule city had authority to expend funds for the purpose of advertising.

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We quote from the case of Davis vs. City of Taylor, supra, as follows:

"Article 8, Section 3, of the Constitution provides:

"'Taxes shall be levied and collected by general laws and for public purposes only.'

"It is well settled that municipal corporations cannot impose taxes for other than public purposes.

"The amendment to the charter of the city of Taylor set aside certain funds to be devoted to 'the growth, advertisement, development, improvement and increase of the taxable values of said city.'

"In discussing what is a public purpose, McQuillin on Municipal Corporations (2d Ed.) vol. 6, p. 292, § 2532, says: 'What is a public purpose cannot be answered by any precise definition further than to state that if an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose.'

"The Supreme Court of Illinois, in Taylor vs. Thompson, 42 Ill. 9, defines a 'tax for corporate purposes' as follows: 'We may define this phrase to mean a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it.'

"It would not be of value now to attempt to thoroughly define or discuss what are public purposes. No exact definition can be made. Suffice it to say that, unless a court can say that the purposes for which public funds are expended are clearly not public purposes, it would not be justified in holding invalid a legislative act or provision in a city charter providing funds for such purposes.

"Cooley's Constitutional Limitations (5th Ed.) p. 155, says: 'But what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the

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legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion which cannot be controlled by the courts, except, perhaps, where its action is clearly evasive, and where, under pretence of a lawful authority, it has assumed to exercise one that is unlawful. Where the power which is exercised is legislative in its character, the courts can enforce only those limitations which the constitution imposes; not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives.'

"The principal contention in this suit is that it is not a public purpose and not a municipal purpose for the city to spend its funds for advertising the advantages of the city.

"It has generally been held that appropriations for exhibitions of the resources of a particular locality at state or national expositions are not subject to the objection that they are not made for a public purpose. The Supreme Court of California, in the case of *Daggett v. Colgan*, 92 Cal. 53, 28 P. 51, 52, 14 L. R. A. 474, 27 Am. St. Rep. 95, held that an appropriation for the purpose of 'erecting, building and collecting and maintaining an exhibit of the products of the state' at the World's Fair, Columbian Exposition at Chicago in 1893, was not unconstitutional on the ground that it was not for a public use. The Kentucky Court of Appeals, in the case of *Norman v. Kentucky Board of Managers*, 93 Ky. 537, 20 S. W. 901, 18 L. R. A. 556, held that an appropriation to exhibit the resources of that state at the same Columbian Exposition was for a public or governmental purpose. The Supreme Court of Tennessee, in the case of *Shelby County v. Tennessee Centennial Exposition Company*, 96 Tenn. 653, 36 S. W. 694, 33 L. R. A. 717, held that an exhibition of the resources of a county at a state centennial exposition is a county purpose within the meaning of a constitutional provision authorizing taxation for county purposes. In this last case there was an express grant of power by the General Assembly to levy such a tax. We can see no material difference in the ultimate purpose of an exhibit of the resources of a particular locality at an exposition and the more modern method of presenting the advantages and opportunities of a city, county,

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or state, through newspaper or magazine advertising, and similar channels.

"In the recent case of Sacramento Chamber of Commerce v. Stephens, 212 Cal. 607, 299 P. 728, the Supreme Court of California upheld a contract of the city of Sacramento which provided for the general advertising of the city. The charter of the city of Sacramento specifically provided for the appropriation of the funds of the city for such purposes. In the course of the opinion, Chief Justice Waste uses the following language:

"In answer to the contention that the contract between the city and the Chamber of Commerce does not relate to a public purpose, little need be said. In considering a somewhat similar question which arose out of a demand on the state controller to pay a claim contracted and audited by the California World's Fair Commission in connection with the construction of buildings and the maintenance of an exhibit of the products of the state of California at the World's Fair Columbian Exposition held in the city of Chicago, state of Illinois, in 1893, this court said, in Daggett v. Colgan, 92 Cal. 53, 57, 28 P.51, 52, 14 L. R. A. 474, 27 Am. St. Rep. 95, "that what is for the public good and what are public purposes 'are questions which the legislature must decide upon its own judgment, in respect to which it is vested with a large discretion which cannot be controlled by the courts, except, perhaps, where its action is clearly evasive. \* \* \* Where the power which is exercised is legislative in its character, the courts can enforce only those limitations which the constitution imposes; not those implied restrictions, which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives.' Cooley's, Const. Lim. p. 154."

"Furthermore, we are of the view that, by common consent, it is now generally held to be well within a public purpose for any given locality to expend public funds, within due limitations, for advertising and otherwise calling attention to its natural advantages, its resources, its enterprises, and its adaptability for industrial sites, with the object of increasing its trade and commerce and of encouraging people to settle in that particular community.' Sacramento Chamber of Commerce v. Stephens, 212 Cal. 607, 299 P. 728, 730.

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"Mcquillin, in his 1932 Cumulative Supplement to his work on Municipal Corporations, at pages 662, 663, says: 'Although recent decisions declare advertising is a public purpose for which the taxing power may be exercised, to authorize the levy of any tax for this purpose or appropriate public moneys therefor, express grant must exist, either statutory or in home rule charters.'

"We have been unable to find any case in the reports in which there was an express grant of power for the purpose of advertising, that the court has not upheld the power of the city to appropriate the money therefor and levy a tax to defray the expense.

"In this case express authority in the home rule charter does exist, and its exercise is not a violation of any provision of the Constitution or the general laws of the state, and can reasonably be included in the general powers and purposes of the municipal government."

In the case of Miller et al vs. El Paso County, 150 S. W. (2d) 1000, the Supreme Court held Article 2253b, Vernon's Annotated Civil Statutes unconstitutional on the ground that said statute contravenes provisions of Section 56, Article III of the State Constitution. This statute authorized all counties in this State having a population of not less than 145,000 inhabitants and not more than 175,000 inhabitants, and containing a city having a population of not less than 90,000 inhabitants, as shown by the last preceding Federal Census, to levy a tax of not over five (5) cents on the valuation of \$100.00 of such county, for the purpose of advertising and promoting the growth and development of said county and its county seat; provided that before the Commissioner's Court of such counties could levy any tax for such purpose, the qualified tax paying voters of the county would have to authorize the Commissioner's Court to levy such tax by a majority vote.

It was said in the case of Miller et al vs. El Paso County, supra:

"Our holding that the Act is void on the grounds above stated, renders it unnecessary for us to pass on the other assignments raised in the briefs. In this connection, however, we deem it proper to call attention to the fact that the case of Davis v. City of Taylor, 123 Tex. 39, 67 S. W. (2d) 1033, relied

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on by defendants in error as authorizing the expending of public funds for advertising purposes, dealt with a home-rule city and not a county, and that a city may exercise proprietary functions, while a county, as a mere subdivision of the State, can exercise only governmental functions."

In view of the foregoing statement by the Supreme Court, it is doubtful that the expenditure of county funds for the purpose of advertising the county is a governmental function, and that a county would be authorized to make such expenditures.

We also direct your attention to the case of Anderson et al vs. City of San Antonio, 67 S. W. (2d) 1036, wherein the Supreme Court held that neither the charter nor general laws empowered the city of San Antonio to levy a tax to advertise the city and that an ordinance authorizing such a tax levied for such purpose was invalid.

In view of the foregoing authorities and as heretofore stated, we are unable to categorically answer the question under consideration. We have called your attention to certain portions of the bill which are questionable insofar as the constitutionality of the Act is concerned.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

AM:LJ

*[Handwritten signature and initials]*

